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No. 79-983

In the
Supreme Court of the United States
OCTOBER TERM, 1979

UNITED STATES OF AMERICA,
Appellant,

vs.

HUBERT L. WILL, et al.,
Appellees.

On Appeal from the United States District Court for The Northern District of Illinois.

MOTION TO AFFIRM

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IN THE

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UNITED STATES OF AMERICA,

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MOTION TO AFFIRM

JURISDICTION

Appellees agree with appellant that this Court has jurisdiction to hear all issues in this cause. They also agree that the Justices of this Court are not barred from participating in the disposition of this case and that this Court can and should hear the appeal.[1] They submit, however, that the Questions Presented are not substantial and are controlled by well-settled precedents. Accordingly,

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[1] Jurisdictional Statement (hereinafter, "J.S.") at 17, n. 12.

appellees respectfully move the Court to affirm, the judgment of the district court being so obviously correct that further review or argument is not warranted.

QUESTIONS PRESENTED

1. Whether the proviso contained in the Legislative Branch Appropriations Act of 1977 (Pub. L. No. 94-440, 90 Stat. 1439, 1446) (October 1, 1976), restricting the use of funds, served to supercede or amend provisions of the Federal Salary Act (Pub. L. 90-206, 2 U.S.C. 351-361, Section 225, 81 Stat. 642-45) [hereinafter "Salary Act"] and the Executive Salary Cost-of-Living Adjustment Act (Pub. L. No. 94-82, 89 Stat. 419 [hereinafter "Adjustment Act"]?

2. Assuming question 1 is answered in the affirmative, whether the cost-of-living adjustments prescribed in the Adjustment Act which went into effect for Article III judges on October 1, 1976, constitute a portion of a judge's "Compensation" within the meaning of the Compensation Clause, Article III, Section 1?

3. Whether Pub. L. No. 95-66, adopted July, 1977, had the effect of superceding, rescinding or amending the provisions of the Salary Act and the Adjustment Act?

4. Assuming question 3 is answered in the affirmative, whether the right to cost-of-living adjustments prescribed in the Adjustment Act constitutes a portion of a judge's "Compensation" within the meaning of the Compensation Clause, Article III, Section 1?

5. Assuming judges' Compensation has been directly diminished, whether appellees must demonstrate that the diminution was a part of a discriminatory attack upon

Article III judges with the designed purpose or effect of undermining their independence.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Compensation Clause, Article III, Section 1 of the Constitution, provides:

> The Judges, both of the supreme and inferior Courts shall hold their Offices during good Behavior and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

The pertinent portions of the statutes involved are set forth in Appendix E of Appellant's Jurisdictional Statement. Additionally, the Court may take judicial notice of similar restrictions on the use of appropriated funds enacted for fiscal years 1979 and 1980 (Pub.L. 95-391 and Pub.L. 96-86) which are set forth in Appendix A to this Motion *infra* at pp. 1a-2a.

SUMMARY OF ARGUMENT

As appellant suggests, it may be unnecessary in this case to address the constitutional claims asserted by plaintiffs-appellees, but this is true only if the district court is affirmed on other grounds. If the non-constitutional issues are resolved in appellant's favor, consideration of the constitutional issues is necessary.

The initial question thus concerns whether the challenged legislation—a single sentence in the lengthy Legislative Branch Appropriations Act of 1977 [Pub. L. 94-440; October 1, 1976], and a statute enacted in July of 1977, prohibiting payment of the salary adjustment pay-

able at the commencement of the 1978 fiscal year [Pub. L. 95-66]—repealed the fiscal 1977 and/or fiscal 1978 cost-of-living adjustments otherwise payable by operation of the Adjustment Act. The solidly established rule in this regard is that funding limitations relate solely to the use of appropriated funds, and do not constitute amendments to or repeals of existing statutes under which specific rights and duties are defined. This conclusion follows from a related rule, equally well-established, which is not confined to appropriations law: amendments to and repeals of existing statutes must be explicit; amendment by implication is not favored.

Application of these rules of statutory construction in the instant case is particularly appropriate in light of the position taken by the Acting Comptroller General (that the funding limitation contained in Pub. L. 94-440 "does not effect the legal rate" and "does not suspend or postpone the operation of" the Adjustment Act), and the actions taken by the President (in acknowledging by Executive Order that the lawful rates for fiscal 1977 were the *adjusted* salary levels). Further support, with respect to the limitations imposed both for fiscal 1977 and fiscal 1978, is found in subsequent enactments relative to the Adjustment Act for the fiscal years 1979 and 1980. The latter enactments represent a virtual concession that Congress has chosen to withhold payment rather than to amend the Adjustment Act. For example, Congress (by the terms and language of Pub. L. 96-86; October 12, 1979), and appellant (in related litigation) have conceded that the similar limitation for fiscal 1979 (contained in Pub. L. 95-391) was merely a limitation on the use of funds appropriated for fiscal 1979 and did not prevent the adjustment from taking effect.

Assuming that the Adjustment Act was not substantively amended, the statutory right to the adjustments was not extinguished by either of the enactments under consideration. Since it is unquestioned that a suit will lie for the payment of an unfunded obligation, and there being no genuine issue as to any material fact, affirmance is warranted by the straight-forward application of the foregoing principles of statutory construction.

In the event that either Pub.L. 94-440 or Pub.L. 95-66 is understood to have rescinded the right to the adjustment mandated under the Adjustment Act, it becomes necessary to consider whether that right is part of the judges' compensation which, under the unqualified proscription of the Compensation Clause of Article III, Section 1, is protected against diminution. Since the adjustment for fiscal 1977 became payable October 1, 1976 and the appropriations limitation contained in Pub.L. 94-440 was not signed into law until later that day, that proviso (if it had any substantive effect on pay levels) resulted in a rollback in pay to the pre-October 1, 1976 salary levels. That Article III, Section 1 prohibits absolutely such action is manifest.

In the context of Pub.L. 95-66 (again, assuming that it is viewed as having substantively affected the statutory right to an adjustment), the question presented is whether the compensation of a judge includes the right to an adjustment. Appellees submit that it clearly does.

First, the Adjustment Act unequivocally *requires* and thus guarantees that judges shall be paid an annual adjustment measured by the average adjustment received by most other federal employees under the Federal Pay Comparability Act of 1970, 5 U.S.C. §5305, et seq. Second,

Congress has explicitly defined the adjustment as part of the salary component of a judge's compensation, e.g. 28 U.S.C. §135: "Each judge of a district court of the United States shall receive a salary at an annual rate determined under Section 225 of the Federal Salary Act of 1967 . . . as adjusted by [the Adjustment Act]".

Third, each year since 1976, Congress has enacted legislation providing that the adjustment in salary to which judges are entitled would not be funded. If the compensation scheme did not create an existing right to the adjustment mandated under the Adjustment Act, such annual limitations on the use of appropriated funds would be unnecessary. As previously noted, the adjustment which took effect October 1, 1978 was not extinguished by passage of the appropriations limitation contained in Pub. L. 95-391. Even appellant has conceded, in related litigation, that the full compensation, as adjusted October 1, 1978, became payable at the expiration of the 1979 fiscal year. Were the right to an adjustment "contingent" and not "vested", as appellant argues, judges' compensation would not have become payable at the adjusted level when the fiscal year limitation expired October 1, 1979. It cannot be argued that the right was "contingent" for fiscal years 1977 and 1978, and was "something else" the following year.

Fourth, for purposes of achieving the objectives of Article III, Section 1, the term "compensation" must extend to an annual adjustment in salary, where that adjustment has been guaranteed in advance under a specific statutory formula. Otherwise, the promised adjustment might be withheld for any of the reasons sought to be obviated by the Constitution's unequivocal pro-

scription against diminution. For this reason, similar provisions of state constitutions, considered against similar efforts to withhold the payment of annual cost-of-living adjustments, have been interpreted to include the right to such adjustments within the meaning of the term "compensation." Indeed, perhaps the earliest judicial decision on the subject held that fees then paid to District of Columbia judges, the sum total of which could not be ascertained prior to the performance of the judicial functions for which they were earned, were a component of the judges' compensation protected under Article III, Section 1.

Accordingly, appellees submit that there is nothing novel or remarkable in their understanding that, since enactment of the Adjustment Act in 1975, the right to the adjustment provided therein has been an integral part of judges' compensation.

Finally, appellant contends that it is permissible to withhold a portion of a federal judge's compensation so long as judges are not the object of discrimination. This novel theory is one which no court has embraced, and which this Court has rejected in the context of a similar direct diminution of a judge's compensation. Moreover, Congress has explicitly recognized that discriminatory treatment is not a relevant consideration in the constitutional protection afforded judges, both during the Great Depression (when all federal employees' salaries were lowered, except those of judges), and in the Adjustment Act which specifically exempts judges from any downward cost-of-living adjustments which might be imposed on other federal employees.

STATEMENT

The facts in this case are neither complicated nor disputed. All of the essential facts of plaintiffs' Complaint were admitted. Appellant's Answer disputed only the legal conclusions drawn from those facts. There is no genuine issue as to any material fact.

Moreover, appellees respectfully submit that, while the outcome of this case is of profound importance to the maintenance of the separation of powers in our government and the preservation of the independence of the judiciary,[2] the issues presented in this appeal are neither complicated nor substantial. The resolution of these issues is controlled by long settled principles. They concern the effect, if any, on judicial salaries of the enactment of certain legislation in 1976 and 1977 withholding and refusing to provide funds for fiscal 1977 and 1978, respectively.[3]

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[2] The very fact that Judges of the United States Courts find it necessary to litigate to preserve the independence of their office is itself of historic significance.

[3] Throughout its Jurisdictional Statement, appellant improperly characterizes the challenged legislation as the "Pay Acts" of 1976 and 1977.

The first statute challenged (which appellant refers to as the 1976 Pay Act) was the 1977 Legislative Branch Appropriations Act. That Act had nothing whatsoever to do with prescribing the "pay" of federal judges, which was established by the Salary Act and the Adjustment Act. The adjustment for that year was set by the President and was not disapproved by Congress. Judicial salaries were funded by the Appropriations Act for the Judiciary, approved by the President July 14, 1976. (Pub. L. 94-362, 90 Stat. 952.) Later the Legislative Branch Appropriations Act purported to prohibit funding of these

The compensation of a federal district judge is defined in part at 28 U.S.C. §135 as follows:

> Each judge . . . shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), as adjusted by section 461 of this title [i.e., the Executive Salary Cost-of-Living Adjustment Act].

Similar provisions apply to the compensation of other Article III Judges. See 28 U.S.C. §§ 5, 44(d), 213, and 252.

The central issues in this case involve the Adjustment Act which, since 1975, has provided that the salaries of executive level federal employees, including judges, shall be adjusted annually in an amount measured by the average adjustment in General Schedule salaries as determined under the Federal Pay Comparability Act of 1970 [hereinafter the "Comparability Act"] 5 U.S.C. §5305, et seq. These percentage adjustments are submitted to Congress by the President, and for judges, become payable, without further action by Congress, on October 1 of each year (the first day of the fiscal year), unless within 30 days of their submission either House of Congress adopts a resolution disapproving the President's report.[4] But

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[3] (Continued)
adjustments. But the adjustments remained, as will be shown below.
Similarly, the Act referred to by appellant as the "1977 Pay Act" (Pub. L. 95-66) prohibited payment of the fiscal 1978 adjustment.

[4] In which case the President must follow the recommendations of the Advisory Committee on Federal Pay. 5 U.S.C. §5305(c)(2).

Congress has refused to fund the adjustment in four of the five years since enactment of the Adjustment Act. Only the first adjustment in the amount of 5% for fiscal 1976 (effective October 1, 1975) was paid. This adjustment, which marked the first increase in judicial compensation in more than six years, was fully funded. (That adjustment increased the salary of a district judge from $40,000 to $42,000.)

For fiscal year 1977 (commencing October 1, 1976), the annual rates of pay for General Schedule employees were increased by an average of 4.8%. The same adjustment was applied to Executive Schedule salaries, including those of federal judges. The annual salary of district judges was thereby established at $44,000. This adjustment was set out in Executive Order 11941 issued by the President on October 1, 1976.[5] In the district court, appellant acknowledged that "at least for a few hours" judges were earning adjusted amounts, *i.e.*, $44,000 for district judges.[6]

Later that same day, October 1, 1976, the Legislative Branch Appropriations Act of 1977, P.L. 94-440 (hereinafter "1977 Appropriations Act"), was signed by the President. Among other things, the 1977 Appropriations Act imposed a limitation on funds available to pay the full salary to which federal judges were entitled by law. Specifically, the Act provided that none of the funds appropriated

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[5] The issuance of an Executive Order is not critical to the adjustment going into effect. As noted above, these adjustments go into effect automatically.

[6] See discussion at Pp. 22-23 and n. 23 *infra*.

in that Act or any other Act could be used to pay salaries for certain positions, including judges, at a rate which exceeded the rate in effect on September 30, 1976, the last day of the previous fiscal year. For district court judges, this proviso is interpreted by appellant to limit their salaries to $42,000, the amount applicable in the prior fiscal year. The effect and legality of this limitation in the 1977 Appropriations Act is the subject of Count I of the Complaint.

Effective July 11, 1977, Congress passed Pub.L. 95-56 providing in pertinent part that any adjustment in Executive Schedule salary levels, including judicial salaries, which ordinarily would go into effect on October 1, 1977, "shall not take effect." Because of this limitation the adjustment of 7.2% which became payable for General Schedule employees was not applied to judicial salaries. The legality of this limitation is the subject of Count II of the Complaint.

On September 30, 1978, Congress passed the 1979 Legislative Branch Appropriations Act. That Appropriations Act contained a proviso restricting the use of funds to pay adjustments which was virtually identical to that contained in the 1977 Appropriations Act discussed above. (See Pub.L. 95-391, §304(a)(1), Appendix A, p. 1a) (The Adjustment effective October 1, 1978 was 5.5%.) The effect, if any, of this limitation on judicial compensation is presently being litigated.[7] It is understood by all interested government agencies, the Congress and appellant that this limitation was tempo-

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[7] Hubert L. Will et al. v. United States, (79 C 4368, N.D. Ill.) (hereinafter referred to as "*Will II*"). This is the litigation referred to by appellant at J.S. 14, n. 9.

rary only and lapsed at the termination of the fiscal year on September 30, 1979. The judges' right to the 5.5% adjustment on October 1, 1979 is undisputed. Appellant has so conceded in the pending district court case.[8]

Accordingly, on October 1, 1979 the limitation imposed in October 1978, if ever valid, expired. Additionally, a fiscal 1980 adjustment of approximately 7% became payable on that date. The aggregate of the fiscal 1979 and 1980 adjustments resulted in a total adjustment of 12.9% over the rates actually being paid judges at that time. On October 12, 1979, Congress adopted Pub.L. 96-86, a Joint Resolution intended to provide appropriations for certain agencies, which included a proviso that, for the fiscal year 1980, "funds available for payment to executive employees . . . who under existing law are entitled to aproximately 12.9 percent increase in pay, shall not be used to pay any such employee or . . . official any sum in excess of 5.5 percent increase in existing pay and such sum if accepted shall be in lieu of the 12.9 percent due for such fiscal year." This limitation is also the subject of the pending litigation (*Will II*). In that litigation, appellant has conceded that

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[8] In its "Memorandum of Law in Support of Defendant's Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment" filed on December 17, 1979 in *Will II*, appellant states:

> The 1979 Pay Act was an appropriations measure expiring at the end of the fiscal year, and it extinguished the 1979 cost-of-living increase only during fiscal 1979 which ended on September 30, 1979. (p. 4, n. 3.)
>
> On October 1 the 1979 Pay Act expired, and those individuals subject to §304(a), including . . . judges became entitled to the 1979 cost-of-living increase of 5.5%. (p. 11.)

the application of the proviso to judges results in a direct diminution of their compensation.[9] Nevertheless, the judges' right to this compensation is challenged by appellant for substantially the same reasons asserted here.

In the Court below, appellees contended that the limitations contained in Pub.L. 94-440 and Pub.L. 95-66 did not have the effect of altering or amending the statutory salary of judges, and that the adjustments of 4.8% (fiscal 1977) and 7.2% (fiscal 1978) went into effect, but have not been paid. Appellees also contended that, if these limitations did prevent the adjustments from taking effect, they were in violation of the Compensation Clause, and were therefore unconstitutional.

The district court granted summary judgment in favor of appellees on both counts of the Complaint, and entered judgment for the fiscal years 1977 and 1978.

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[9] *Id.* at Pp. 3, 4, 12, 23.

ARGUMENT

I. The Non-Constitutional Issues. We agree with appellant that this case may be resolved on nonconstitutional grounds.[10] As noted above, the October 1, 1976 adjustment of 4.8% went into effect for judges on that date. (See pp. 10-11, *supra.*) Later that same day, the President signed the 1977 Legislative Branch Appropriations Act [Pub.L. 94-440]. That Act contained a proviso restricting the use of appropriated funds to pay certain salaries in excess of the amount paid in the prior fiscal year, ended September 30, 1976. The simple issue presented, with respect to this enactment, is whether the restriction on the use of appropriated funds contained in the Appropriations Act (which was signed into law "at least . . . a few hours" after judges were working at the adjusted rate) effectively repealed the adjustment.

The President thought it did not. Simultaneous with his signing of the Appropriations Act bearing the restriction, he issued his Executive Order (11941) setting forth the salary rates, *as adjusted.*[11] The President's Order appropriately includes a caveat that "by virtue of the Legislative Branch Appropriations Act" funds are not available to pay the full salary.[12]

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[10] J.S. at 17. We also agree that the Court has jurisdiction to hear and decide the non-constitutional questions presented by this appeal. (J.S., 17 at n. 13)

[11] 3 C.F.R. 151 (1976 Comp.) See Schedule 7. The salary of a district judge is listed at $44,000.

[12] Federal law reporters also reflect the understanding that the adjusted salary was proper. See e.g., West Publishing Company, "Federal Rules, Civil Procedure,

The Administrative Office of the United States Courts thought it did not. In a Bulletin[13] issued immediately following the legislative action, it advised all judges that pursuant to the provisions of the Adjustment Act, their salaries *were adjusted.* It further advised that, because of the restriction in the 1977 Legislative Branch Appropriations Act, funds were not available to pay rates in excess of those in effect in the prior year, ended September 30, 1976.

The Acting Comptroller General said it did not. Even before the "limitation" was adopted, he issued an Opinion in response to a congressional inquiry, that, notwithstanding the (then proposed) limitation in the Appropriations Act, the adjustments provided for under the Adjustment Act would go into effect on October 1, 1976, since the "limitation" did not amend or repeal the Adjustment Act, but merely served to temporarily limit the availability of appropriated funds to pay the adjustments:

> The language [of the Act] *does not suspend* or postpone the operation of Public Law 94-82 [the Adjust-

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[12] (Continued)

Evidence, Appellate Procedure and Title 28 U.S. Judicial Code" which states in the notes following Section 135: "Salaries of district judges *increased* to $44,000 effective on the first day of the first pay period beginning on or after October 1, 1976." (Emphasis supplied.)

The authors add the caveat contained in the Executive Order that funds are not available to pay the full rate.

[13] Bulletin No. 492, Supplement No. 24, issued October 11, 1976. The salary of a district judge is shown as $44,000. See Appendix B, 3a-4a.

ment Act] and it *is not therefore a limitation on the rates of pay established thereunder.* The language sets a limitation on the use of funds. By its terms it restricts the use of funds otherwise available. . . ." (Emphasis added.)[14]

Advised of the Comptroller General's determination in this regard, Congress proceeded to enact the limitation.

The most convincing argument was still to come, however. Two years later, this scenario was replayed almost verbatim when the October 1, 1978 adjustment was considered. Prior to October 1, 1978, the President submitted an adjustment of 5.5% for all General Schedule and Executive employees for fiscal 1979. Again, Congress included in the Legislative Branch Appropriations Act a proviso withholding funds. Again, the President issued his Executive Order showing salaries as adjusted, with the caveat that funds were not available to pay the stated amount.[15]

This time, however, there is no dispute but that the limitation was temporary only, and was not intended to repeal, amend or substantively alter the Adjustment Act. This time, the President,[16] the Congress[17] the Office

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[14] 122 Cong. Rec. 31860-31861 (1976) Significantly, the Office of the Comptroller General reached this conclusion without regard to whether any person affected by the adjustment worked "for a few hours," or for any period, under the adjusted rates.

[15] Executive Order 12087, 43 Fed. Reg. No. 197, Oct. 11, 1978.

[16] Id.

[17] See also discussion of and quotation from Pub. L. 96-86 at pp. 22-23, infra.

of Personnel Management,[18] and Appellant agree that this "limitation" was temporary only. As conceded by Appellant in *Will II*:

> The 1979 Pay Act was an appropriations measure expiring at the end of the fiscal year, and it extinguished the 1979 cost-of-living increase only during fiscal 1979 which ended on September 30, 1979.[19]

Appellant cites *United States* v. *Larionoff*, 431 U.S. 864, 879 (1977) principally for the proposition that Congress may prospectively reduce the pay of government employees. More significant is the holding in that case. This Court held that the servicemen-plaintiffs in that case were entitled to a re-enlistment bonus even though the bonus for their specialty was abolished before their re-enlistment period began and before they were eligible to receive it. The Court noted that the servicemen had already earned the right to the bonus, "even though the date on which the bonus was to paid had not yet arrived." This Court added the caveat that, "if Congress had such an intent, [to divest the servicemen of the prospective bonus], serious constitutional questions would be presented." (Id. at 879)

Appellant's argument here is even more tenuous, for the congressional action which is claimed to have abolished the judges' right to their adjustment is found in an appropriations act. This Court has consistently held that "the intention of the Legislature to repeal must be clear and

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[18] See FPM Letter 531-54 dated Oct. 12, 1979, and FPM Bulletin 534-5, dated November 15, 1979.

[19] Memorandum of Law in Support of Defendant's Motion For Summary Judgment and in Opposition to Plaintiffs' Motion For Summary Judgment, p. 4, n.3.

manifest," *Posadas* v. *National City Bank,* 296 U.S. 497, 503 (1936), as "repeals by implication are not favored," *Morton* v. *Mancari,* 417 U.S. 535, 549 (1974). Very recently, this Court had occasion to emphasize that "the policy [against repeals by implication] applies with even greater force when the claim to repeal rests solely on an Appropriations Act" *Tennessee Valley Authority* v. *Hill,* 437 U.S. 153, 190 (1978). There the Court noted that both Houses of Congress have rules against the amendment of existing legislation in appropriations bills. (Id. at 191.)[20]

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[20] In *United States* v. *Dickerson,* 310 U.S. 554, 555 (1940), relied upon by appellant, the provisions of an Appropriations Act were found clearly to intend a continued suspension of benefits under the statute providing for re-enlistment bonuses. This Court held that the limitation there was more than a temporary restriction on the use of funds. It was part of a program that continued over six years. The first four years other Acts had specifically provided that the payment of enlistment allowances "*is hereby suspended.*" Here we have demonstrated that to the contrary, the limitation only served to temporarily restrict the use of funds. Compare also *Gibney* v. *United States,* 114 Ct. Cl. 38 (1949); *Lovett* v. *United States,* 66 F.Supp. 142 (Ct. Cl. 1945); *Geddes* v. *United States,* 38 Ct. Cl. 428 (1903); *Byron Brown Ralston* v. *United States,* 91 Ct. Cl. 91, cert. den. 311 U.S. 687 (1940); *State of Louisiana* v. *Weinberger,* 369 F.Supp. 856, 860 (E.D. La. 1973); *Concerned Residents of Buck Hill Falls* v. *Grant,* 537 F.2d 29 (3d Cir. 1976); see also *New York Airways, Inc.* v. *United States,* 369 F.2d 743, 748 (Ct. Cl. 1966) ("It has long been established that the mere failure of Congress to appropriate funds, without further words modifying or repealing expressly or by clear implication, the substantive law, does not in and of itself defeat a government, obligation created by statute.") All of these cases supporting appellees position were cited and discussed in appellees' briefs in the district court. Appellant made no effort to distinguish or demonstrate the inapplicability of a single one.

Appellant suggests (J.S. at 18) that its reading of the limitation (that a substantive change was intended) is preferred because we should not lightly presume that Congress would act to deny funds to satisfy "acknowledged lawful obligations under the Adjustment Act."[21] We respectfully submit that any notion that Congress would "not lightly" deny funds to satisfy such acknowledged obligations was disabused when Congress knowingly and admittedly did precisely that in its most recent adoption of the limitation on October 12, 1979, where it recited in the statute (Pub.L. 96-86) that judges were *entitled* to the adjustment—and then simply refused to provide the funds for full payment.

With respect to the October 1, 1976 Adjustment, appellant refers to the legislative history in an attempt to demonstrate that Congress intended a substantive change in the law and not just a temporary restriction. Appellees disagree. The legislative history shows only that Congress was sensitive to the political consequences of *accepting* a wage adjustment during the fiscal year ending September 30, 1977. The action, in restricting the payment, is totally consistent with Congress' political objectives.[22]

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[21] J.S. at 18.

[22] The legislative history of Pub.L. 94-440 evinces only a Congressional intent that *members of Congress* should go on public record either in favor of or against a pay increase for *members of Congress* and should not rely upon automatic increase provisions. In short, the legislative history of the Act is supportive of the proposition that an increase in compensation for a member of Congress is a political consideration of both Houses, especially in an election year.

Of noteworthy interest are the comments of Representative Wirth, with respect to "legislating by appro-

This Court has cautioned in the past against attempting to determine legislative intent from the comments or speeches of a Member of Congress. Rather than relying on such out-of-context comments, appellees submit that the express language demonstrates that the intent of Congress was merely to restrict the use of funds. The opposing interpretation urged by appellant is: (1) contrary to the opinion of the President; (2) contrary to the opinion of the Comptroller General; (3) contrary to the opinion of the Administrative Office of the United States Courts; (4) contrary to the opinion of the Office of Personnel Management interpreting virtually identical subsequent legislation; (5) contrary to the opinion of the Congress in interpreting virtually identical subsequent legislation; (6) contrary to the position taken by appellants in litigation involving the subsequent legislation; (7) con-

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[22] (Continued)

priation." The Congressman emphasizes the distinction between legislation and appropriation, and stresses that the latter only deals with the level of funds to be spent on policies which were otherwise authorized. Thus, the policy of Congress with respect to *judicial* salaries was expressed in the Salary Act and the Adjustment Act.

Finally, Senator Hollings has some interesting comments on the "undraftsmanlike" appearance of the Shipley Amendment. He states:

> "What it simply says is that none of the funds contained in this Act shall be used for increases in salaries for members of the House of Representatives pursuant to Section 204 a of Public Law 94-82. That was the Shipley amendment.
>
> "It did not say that the salaries would not be increased under the law, but that the funds could not be used for any increases. The basic law is still there. There is a lawsuit about some of those already frozen, and we will apparently have another suit under this one." 122 Cong. Rec. S. 15341 (1976).

trary to the presumption against the implied repeal or suspension of existing legislation, particularly when the claimed repeal rests on an apropriations act; and (8) contrary to the rules of both Houses.

In short, appellees respectfully submit that the restriction on the use of funds found in the 1977 Legislative Branch Appropriations Act did not extinguish judges' rights to an adjustment, but only temporarily withheld payment of the adjustments. It is clear that a suit to collect payment of such unfunded obligations will lie. *See* note 20, *supra*.

Likewise, appellees submit that the statute enacted to restrict the adjustment payable for fiscal 1978 (Pub.L. 95-66, July 11, 1977) did not amend the Adjustment Act, particularly when read against the history of the Adjustment Act and considering the well-established presumption against amendments and repeals by implication. For fiscal 1978, had Congress intended to effect a repeal of the Adjustment Act, it could have attempted to do so by the use of clear and unequivocal statutory language. It did not.

Accordingly, appellees respectfully submit that the Adjustment Act was not impliedly or explicitly repealed by the fiscal year 1977 or 1978 enactments. This conclusion is an entirely valid basis for affirmance.

II. The Limitations Resulted In A Diminution Of Judges' Compensation.

Appellant next contends that, assuming this Court concludes that the limitations discussed above effectively prevented the adjustment of judges' salaries, these limitations did not "diminish" the compensation of Article III judges within the meaning of the Compensation Clause.

Its theory is based on the contention that the right to an increase under the Adjustment Act is "contingent" only and does not "vest" or is not "earned" by a judge until October 1 of each year. Until that time, appellant contends, there is "only an expectancy" which is not constitutionally protected. (J.S. at 24.)

Again, the district court was clearly correct in rejecting this contention and the argument advanced by appellant raises no issue requiring further hearing. First, the adjustment due October 1, 1976, clearly did "vest." In the district court, appellant conceded the validity of the argument that at least for "several hours during October 1" judges were entitled to the adjustment.[23] It now takes a

[23] Defendant's Opposition to Plaintiffs' Motion for Summary Judgment and Reply to Plaintiffs' Opposition to Defendant's Motion for Judgment on the Pleadings, pp. 3-4. Appellant attempts to argue in this Court that the "limitation" reverts back to the first moment of the day it was enacted. Its concession in the lower court was more accurate. In the district court, appellant first argued that the effective date was October 10. (Id., f.n. at p. 3) After it learned by virtue of the affidavits referred to at p. 23, n. 20 of its Jurisdictional Statement that judges' salary adjustments go into effect on October 1, it conceded the validity of the argument that for "several hours during October 1" judges were entitled to the adjustments. Now appellant contends the adjustment never went into effect because the enactment of the limitation should be effective from the beginning of the day. It offers *Lapeyre* v. *U.S.*, 84 U.S. (17 Wall) 191 (1872) and *Central Maryland Lines, Inc.* v. *U.S.*, 240 F.Supp. 254 (D.Md. 1965) as authority for the proposition that as a "general rule" an Act of Congress is deemed effective from the first moment of the day on which it is signed regardless of the precise time of its actual approval by the President. This is not the "general rule" at all but a rule "specially" devised for the particularly

different tack, but the fact remains that when federal judges went to work on October 1, 1976, they were earning $44,000 per year. When they went home, under appellant's intepretation of the events of that day, they were downgraded to the prior rate of $42,000.

Appellees, however, have no intention of demeaning their right to full compensation—or the value of judicial service—by predicating their claims on the performance of a few hours service or on appellant's mystical vesting hour. This issue, we submit, was resolved 177 years ago in the very first reported case to consider the Compensation Clause, *United States* v. *More,* 3 Cranch 160 (Cir. Ct. D.C. 1803). At issue in that case was an act of Congress abolishing fees charged by justices of the peace. Judge More claimed that the law could not be invoked as to justices who took office at a time when such fees were lawful. The fees were payable when the

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[23] (Continued)

peculiar factual situation found in *Lapeyre.* It would appear that the "general" rule is set forth in *Louisville* v. *Savings Bank,* 104 U.S. 469 (1881), *Taylor* v. *Brown,* 147 U.S. 640 (1892), and *Burgess* v. *Salmon,* 97 U.S. 381 (1878).

In *Louisville* the Court held that the *Lapeyre* (first moment) rule applies "when the evidence does not show the necessity of regarding fractions of a day." (104 U.S. at 476.)

The *Louisville* Court then promulgated what is properly the general rule governing this question, that "[Courts] may, when substantial justice requires it, ascertain the precise hour when a statute took effect by approval of the executive. . . . We look to the final act of approval by the executive to find when the statute took effect, and when necessary, inquire as to the hour of the day when that approval was, in fact, given," 104 U.S. at 478-79.

services were rendered. Thus, the amount of fees any justice would receive in any year was unknown, or in appellant's terms, was "only an expectancy," was "not yet earned" and had not "vested." (J.S. at 24.) Nevertheless, the Court held that as to sitting justices, the abolition of these fees was a diminution of compensation in violation of Article III, Section 1.[24]

Furthermore, appellant misunderstands the purpose of the 1975 Executive Salary Cost-of-Living Adjustment Act. The annual adjustment received each year in October is to compensate for the loss already sustained as a result of the increase in cost-of-living *in the previous year.* Hence, the 4.8% salary adjustment in 1976 and the 7.2% in 1977 were to bring pay levels back to their effective levels.

The court below correctly recognized that Article III, Section 1 obliges Congress to declare what the compensation of a federal judge shall be and further recognizes that Congress may do so by defining the salary component of a judge's compensation in terms of a specific formula. This is common, if not prevalent, in employment contracts, statutes and other provisions covering most of the American work force, executive and non-executive, including

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[24] As to appellant's assertion that the salary increases had not yet been "earned," by federal judges prior to October 1 of each year, *Booth* v. *United States,* 291 U.S. 339 (1934) is instructive. The Solicitor General there argued that the salaries of retired federal judges could be diminished since "no duties are obligatory on one who has retired." 291 U.S. at 351. This Court unanimously rejected the argument that the right to compensation was linked to the requirement to perform particular duties.

state and local government officers and employees. Hence, while the salary adjustment might not be paid out until October 1 of each year—a point upon which appellant so heavily relies—the entitlement to that adjustment "vested" with the enactment of the 1975 Executive Cost-of-Living Adjustment Act. The report annually submitted by the President to Congress establishes only the actual percentage amount of the cost-of-living adjustment for federal employees, based on the previous year's increase in the cost-of-living, not the right to the adjustment.

The Supreme Court of Delaware recently addressed this question in interpreting its own constitutional prohibition against the diminution of judicial salaries. Citing this Court's decision in *Booth* v. *United States,* 291 U.S. 339 (1934), the Delaware Court observed the constitutional provision must logically "apply as well to a threat of removing the salary adjustment as the salary itself. . . ." *Stiftel* v. *Malarkey,* 384 A.2d 9, 15, 16 (Del. Sup. Ct. 1977). In that case the Court considered the same arguments appellant advances here and answered:

> It is argued that a formula supplement like the one in this case is a "future" promise which can be revoked with impunity, whereas a stated salary increase would be legally different. We fail to see the basis for such a distinction.

The Court viewed the cost-of-living adjustments *as a part of the judges' compensation* which may not be revoked.

Appellees respectfully submit that the right to a cost-of-living adjustment is clearly a component of a judge's compensation. Indeed, appellant's contention in this regard is contrary to its own position, the position of

Congress, and the understanding of the President and the Office of Personnel Management in analyzing the subsequent adjustment effective October 1, 1978, as discussed at p. 16, *supra*. There it is conceded that the adjustment became payable after the appropriations restriction for that year expired on September 30, 1979. If appellant was correct—and consistent—the "nonvesting" of the fiscal 1979 adjustment by virtue of the restriction in the Appropriations Act would have *eliminated* that adjustment, not postponed it. Yet, in 1979, Congress acknowledged that, judges 'under existing law are *entitled* to approximately 12.9 percent increase in pay." Pub.L. 96-86, (Appendix A, p. 2a) (Emphasis added). As previously indicated, the 12.9% adjustment represents the aggregate of the fiscal 1979 adjustment, payment of which was postponed by the appropriations restriction, and the fiscal 1980 adjustment which became effective October 1, 1979. By its candid recognition of a judge's entitlement to the October, 1978 cost-of-living adjustment, Congress has clearly declared what it believes a judge's compensation to be.[52]

The law as to what constitutes diminution is not in dispute. No court has ever narrowed the protection

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[52] Appellant expresses its fear that the district court's holding—that future increases under the Adjustment Act are part of a judge's compensation protected by the Compensation Clause—would severely limit Congress' constitutional prerogative in setting judicial salaries. It then argues that under the decision below Congress "would forever be precluded from modifying the law in any manner that would afford sitting Article III judges a lesser salary than they would receive pursuant to the Adjustment Act," and that the Adjustment Act scheme may be permanently frozen into law.

of Article III, Section 1 to the barest meaning of cash-in-hand. The definition of a judge's compensation is, as a first matter, the concern of Congress, and Congress has defined that compensation as "a salary at an annual rate determined under Section 225 of the [Salary Act], as *adjusted by* [the Adjustment Act]" (Emphasis added). Congress left no doubt in its yearly enactments that the cost-of-living adjustment was always considered part of a judge's vested compensation, whether Congress would fund it or not. To hold otherwise would allow a massive flaw in the protective function of Article III, Section 1. The opinion of the district court should be affirmed as clearly correct on this point.

III. To Violate The Compensation Clause, The Diminution Need Not Be Discriminatory.

Appellant's final contention is that, assuming this Court agrees that the compensation of judges has been diminished, this Court must nevertheless reverse the judgment below on the ground urged by appellant that a diminution in compensation of a federal judge is not unconstitutional unless it is part of a discriminatory scheme designed to encroach upon the independence of the judiciary. The

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[25] (Continued)

Certainly the Compensation Clause—by its simple terms—limits the power of Congress. This is its virtue, not its vice. We respectfully submit, however, that the only limitation it imposes is the very reasonable one, that once a system is selected—in this case linking judges' cost-of-living adjustments to those paid to the General Schedule employees—the system may not be altered in a manner that would deprive a judge of any compensation that system provides. This is the simple command of the Compensation Clause.

opinion of the district court soundly rejected that proposition. (J.S. at 16a-19a.) It has never been held by any court that proof of a discriminatory animus is necessary to render a direct diminution of a federal judge's compensation unconstitutional.[26] The rule has always been, and *no* case stands to the contrary, that congressional action which reduces or withholds from a judge that to which he is entitled as compensation is, without more, unconstitutional. This Court so held in *Booth* v. *United States,* 291 U.S. 339 (1934).

The setting of *Booth* was a time of national economic peril much more serious than the current circumstances. During the Great Depression, the federal government considered it necessary to reduce the wages of its employees. This reduction was, at first, not applied to Article III judges. Congress itself recognized that such a reduction would violate Article III, Section 1. Accordingly, the Legislative Branch Appropriations Act of 1933, 47 Stat. 382, 402, section 197(5) provided:

> the salaries and retired pay of all judges (except judges whose compensation may not, under the Constitution, be diminished during their continuance in office), if such salaries or retired pay are at a rate exceeding $10,000 per annum, shall be at the rate of $10,000 per annum.

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[26] Only where the compensation of federal judges has been affected *indirectly* by circumstances constituting or involving a general burden of citizenship, has this Court or any court suggested such a prerequisite to a claim of unconstitutionality. See *O'Malley* v. *Woodrough,* 307 U.S. 277 (1939) (general income tax); *Atkins* v. *United States,* 556 F.2d 1028 (Ct. Cl. 1977), *cert. denied,* 434 U.S. 1009 (1978) (inflation).

This section accompanied other provisions in the same statute cutting the salaries of other federal employees, including Members of Congress, employees of the District of Columbia, mail carriers, etc. *See, e.g.,* Pub. L. No. 72-212, 47 Stat. 382, 401 (June 30, 1932), section 105.

The next year, more expenditure reductions were economically necessary. In the "Act to Maintain the Credit of the United States Government," Pub. L. No. 73-2, 48 Stat. 8 (March 20, 1933), pensions were reduced, and three months later, in an Act entitled "Fourth Deficiency Act, fiscal year 1933," Pub. L. No. 73-78, 48 Stat. 283 (June 16, 1933), the salaries of additional federal employees were reduced. Section 13 of that later act, 48 Stat. 283, 307, cut the retirement pay of federal judges by 15%. In the same statute, a host of other federal employees' salaries were reduced as well, in similar amounts. There was no discrimination.

Judge Booth, a retired federal judge whose salary had been reduced, brought suit against the United States. The Solicitor General argued that a *retired* judge was not entitled to the protection of his compensation under Article III, Section 1. This Court ruled that retired judges were still entitled to the guarantee of Article III, Section 1. The Court then considered the question of whether the diminution was unconstitutional. *The Solicitor General had conceded that if a retired judge was an Article III Judge, the diminution would be unconstitutional. This Court agreed*:

> In other words, is a diminution after an increase banned, if the compensation notwithstanding the reduction is in excess of that payable when the incum-

> bent took office? *The answer must be in the affirmative.* Several courts, in well-considered decisions, have so interpreted analogous provisions of state constitutions . . . the Solicitor General with commendable candor admits that *a contrary construction would be subversive of the purpose of §1 of Article III.*

291 U.S. at 352. (Emphasis added)

If the prohibition against diminution were meant to contain the additional proviso hypothesized by the appellant, proscribing diminution of a judge's compensation only when accomplished as a result of discrimination, the Solicitor General would not have conceded otherwise in *Booth* and this Court certainly would not have ruled the challenged statute unconstitutional. The reduction in compensation at issue in that case was in the context of a *general cut in salaries for all federal employees, in the face of severe economic conditions.* The Court would, at least, have been forced to *inquire* into whether the 15% reduction in pay for retired judges was a discrimination calculated to interfere with their independence. No such question was even asked. Had it been, the response would clearly have been negative.[27]

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[27] Nothing in *O'Malley* v. *Woodrough,* 307 U.S. 277 (1939), on which appellant's entire claim on this point rests, implies a contrary rule for *direct* diminution cases. *O'Malley* v. *Woodrough* involved an *indirect* diminution in compensation, one brought about by the impact of a general tax imposed on all citizens.

"The *Woodrough* opinion," Appellant reminds us, "echoed Justice Holmes' dissent in *Evans* v. *Gore* . . . ." (J.S. at 28, n. 24). In light of that observation, it is critical to recall Mr. Justice Holmes' words in *Evans* v. *Gore,* 253 U.S. 245, 265 (1920), that the Constitution's concern with undue dependence by the judiciary, "is a

This principle has been obvious to the Congress as well. As noted above, the Legislative Branch Appropriations Act of 1933, 47 Stat. 382, 402, which lowered federal employees' salaries during the Depression, contained the proviso, "except judges whose compensation may not, under the Constitution, be diminished during their continuance in office." 47 Stat. 382, 402, Section 197(5).

And in the precise statutory context of this case, the Adjustment Act (which requires that federal judges' salaries be adjusted in the same manner as the salaries of General Schedule employees), specifically exempts federal judges from comparability with the General Schedule on those occasions when such adjustments are downward. Section 461(b) of Title 28, United States Code, states that the Act "shall not apply to the extent it would reduce the salary of any individual whose compensation may not, under section 1 of article III . . . be diminished during such individual's continuance in office."

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[27] (Continued)
very good reason for preventing attempts to deal with a judge's *salary as such,*" but was not appropriate for consideration of the "ordinary duties of a citizen." (Emphasis added) The distinction between direct attempts to deal with a judge's salary "as such" and the general obligations of citizenship, is clearly drawn. It had been foreshadowed in the *Evans* dissent, promulgated in *Woodrough,* and has recently been relied upon by the Court of Claims in *Atkins* v. *United States,* 556 F.2d 1028, 1045 (Ct. Cl. 1977), *cert. denied,* 434 U.S. 1009 (1978) (applying the *O'Malley* v. *Woodrough* rule because inflation affected the public generally, though "indirectly bringing about the lowering of judges' 'take-home pay.' "). *Direct* diminutions are—and always have been—forbidden.

Congress would not have enacted the statutory provisions which excluded the reduction of judges' salaries from a general reduction in the pay of all other federal employees, had it shared the views expressed here by appellant. (Nor would the Solicitor General have conceded the point in *Booth,* were it not for his recognition that "a contrary construction would be subversive of the purpose of §1 of Article III," 291 U.S. 352.)

In sum, both Congress and this Court have consistently held that a direct diminution in the compensation of a federal judge is prohibited, regardless of whether other federal employees' compensation is likewise reduced.[28] The only exception to this absolute prohibition against diminution has been in the case of an indirect diminution, imposed upon judges by the effect of a common

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[28] The records of the Constitutional Convention support this principle in another respect, as well. The debates and documents of the Convention reflect a concern for the independence of the federal judiciary in the context of insuring against "undue complaisance" by the courts in favor of the legislature when members of the legislative had cases in Court. 2 M. Farrand, *The Records of the Constitutional Convention* 1787, at 44-45 (remarks of J. Madison). It was Madison's view that the temptation to a judge could only be insured against by proscribing both increases and decreases during the judge's term of office. The Convention, however, insisted that a judge serving a life tenure would require upward adjustments in his compensation. But the Convention did enact the prohibition against diminution which, Madison had contended, represented the more serious situation for possible "undue complaisance."

This effort to remove, as far as practicable, the circumstances under which judges might be encouraged to exercise undue complaisance toward the legislature is not advanced by considerations of discriminatory motives.

duty of citizenship. The very opinion appellant cites, Mr. Justice Holmes' dissent in *Evans,* itself reaffirmed the absolute prohibition when a federal judge's compensation, "as such," was involved. (See n. 27 supra.)

The third contention of appellant, that the compensation of Article III judges may be diminished if not done discriminatorily, finds no support in judicial or congressional action. The motion to affirm may be granted as to this contention on the direct authority of *Booth* v. *United States,* as well as the entire history of the Compensation Clause.

CONCLUSION

Appellees respectfully submit that the law upon which this cause depends is so clear and the decision of the court below is so obviously correct as to warrant no further argument or review in this Court. Accordingly, appellees respectfully move that this Court affirm the judgment entered in this cause by the district court.

Respectfully submitted,

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APPENDIX A

STATUTORY PROVISIONS INVOLVED

Section 304(a)(1) of Pub.L. 95-391 (effective September 30, 1978) the 1979 Legislative Branch Appropriations Act, provides:

> SEC. 304. (a) No part of the funds appropriated for the fiscal year ending September 30, 1979, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1978, if the rate of salary or basic pay for such office or position is—
>
> (1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or
>
> (2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title 5, United States Code, or any other provision of law or congressional resolution.

Section 101(c) of Pub.L. 96-86 [H.J. Res. 412] (adopted October 12, 1979, entitled, Appropriations—Fiscal Year 1980—Continuance, provides in part:

> For the fiscal year 1980, funds available for payment to executive employees, which includes Members of Congress, who under existing law are entitled to approximately 12.9 percent in-

crease in pay, shall not be used to pay any such employee or elected or appointed official any sum in excess of 5.5 percent increase in existing pay and such sum if accepted shall be in lieu of the 12.9 percent due for such fiscal year.

Provided, further, That for the purpose of carrying out this provision and notwithstanding the provisions of the Federal Pay Comparability Act of 1970, the Executive Salary Cost-Of-Living Adjustment Act, or any other related provision of law, which would provide an approximate 12.9 percent increase in pay for certain Federal officials for pay periods beginning on or after October 1, 1979, and notwithstanding section 102 of this joint resolution, the provisions of section 304 of the Legislative Branch Appropriation Act, 1979, which limit the pay for certain Federal offices and positions, shall apply to funds appropriated by this joint resolution or any Act for the fiscal year 1980, except that in applying such limitation the term "at a rate which exceeds by more than 5.5 percent the rate" shall be substituted for the term "at a rate which exceeds the rate" which it appears in subsection (a) of such section for the purpose of limiting pay increases to 5.5 percent.

APPENDIX B

Bulletin No. 492, Supplement No. 24 issued by the Administrative Office of the United States Courts on October 11, 1976 states:

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

Supreme Court Building

Washington, D.C. 20544

October 11, 1976

TO ALL JUDGES AND OTHER OFFICERS AND EMPLOYEES OF THE UNITED STATES COURTS

SUBJECT: FEDERAL PAY COMPARABILITY

Pursuant to the provisions of the Executive Salary Cost of Living Adjustment Act (PL 94-82, 89 Stat. 419) and 5 USC 5301, et seq., the President on October 1, 1976, issued Executive Order 11941 adjusting judicial salaries and the rates of basic pay and salaries of employees subject to the General Schedule effective on the first day of the first pay period beginning on or after October 1, 1976.

The Judicial salaries are as follows:

Circuit Judges	$46,800*
District Judges	$44,000**
Judges of the Court of Claims	$46,800*
Judges of the Court of Customs and Patent Appeals	$46,800*
Judges of the Customs Court	$44,000**
Commissioners of the Court of Claims	$39,600***
Referees in Bankruptcy (full-time)	$39,600***

Pursuant to the Legislative Branch Appropriation Act, 1977, funds are not available to pay a salary or a rate which exceeds the rate in effect on September 30, 1976, as follows:

*$44,600 **$42,000 ***$37,800

The statute permits comparability adjustments in the rates of basic pay of certain officers and employees in or under the Judicial Branch of the Government by amounts not in excess of the amounts of the respective adjustments made by the President in his Executive Order for employees subject to the General Schedule. These increases average 4.83% but vary by grade from a low of 4.24% for grade GS-5 to a high of 11.83% for grade GS-18. The increases for the Judicial Branch, unless otherwise provided for, are effective October 11, 1976.

The salary increases resulting from these upward adjustments in the rates of basic compensation apply generally to the supporting personnel of the Courts of Appeals and District Courts of the United States, the Temporary Emergency Court of Appeals, the U. S. District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the Court of Claims, the Court of Customs and Patent Appeals, and the Customs Court.